IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20877 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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BHUDARBHAI RAMJIBHAI VAGHSANA - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS KRISHNA U MISHRA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 24/11/2005

ORAL JUDGMENT

1.Bhudarbhai Ramjibhai Vaghsana, petitioner has filed this petition of habeas corpus with a prayer that this Court may be pleased to quash and set aside the order

of detention dated 10/9/2005 passed by the Police Commissioner, Rajkot, detaining authority, under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 as being illegal, invalid, null and void, arbitrary, suffers from non-application of mind and violative of the articles 14, 19, 21 and 22 of the Constitution of India. Petition has been filed on 10/10/2005 and matter was placed before the Court on 17/10/2005. On that day, my brother Mr.Justice A.S.Dave has issued rule, which is returnable. Therefore, the matter is come for final hearing in this Court.

2.I have heard Mr.Pandya, learned advocate for Mr.K.U.Mishtra, learned advocate on behalf of the petitioner. He has invited my attention to the order dated 10/9/2005. Said order has been passed under the provisions of Section 3(2) of the PASA Act, which provides powers to make orders detaining certain persons. He has invited my attention to the order dated 10/9/2005 by which the detenu is detained in prison, at Surat on the same day. The learned counsel has also invited my attention to the order dated 10/9/2005 by which the grounds of detention has been

supplied to the petitioner by the Police Commissioner.

3. The grounds of detention revels that the authority had lodged three offences registered against the petitioner detenu as under:

3.1) Offence registered against the petitioner at Bhaktinagar Police Station, Rajkot in connection with CR No.310 of 2003, dated 23/12/2003 under Section 66(B), 65(E) and 81 of the Act. It is alleged that petitioner has stored 35 liters of country liquor, valued at Rs.1,750/-.

3.2) Offence registered against the petitioner at Bhaktinagar Police Station, Rajkot in connection with CR No.46 of 2004, dated 6/2/2004 under Section 66(B), 65(E) and 116(B) of the Act. It is alleged that petitioner has stored three bottles of bear, each of 600 ml. i.e. Havard 5000 brand, valued at Rs.300/- and mobile phone valued at Rs.3,000/-.

3.3) Offence registered against the petitioner at Rajkot Gram Prohibition Station, in connection with CR No.684 of 2005, dated 2/8/2005 under Section 66(B), and

65(A)(E), 116(B), 98, 99. It is alleged that petitioner has stored thirty bottles of English liquor, each of 750 ml., valued at Rs.9,600/-, twenty four bottles of English liquor, each of 180 ml. Valued at Rs.2,160/- and Matador, No.GJ 7U 4922, valued at Rs.1,10,000/-, in total muddamal valued at Rs.1,21,760/-.

3A. It was also stated that as the petitioner was carrying business of liquor, he is bootlegger under Section 2(b) of the PASA Act.

4. On behalf of the State, learned APP appears and he has tried to support the order of detention passed by the detaining authority in this behalf.

5. Learned advocate for the petitioner submitted that in the grounds of detention, it is allege4d that the petitioner is branded as BOOTLEGGER and his activities are prejudicial to the maintenance of public order and public health. The petitioner respectfully states that in the instant case, the detaining authority fails to substantiate that the alleged anti-social activities of the petitioner adversely affected or likely to affect

the maintenance of public order and public health. It may be that the petitioner is BOOTLEGGER within the meaning of Section 2(b) of the PASA Act, but merely because the petitioner is branded as bootlegger, he cannot be preventively detained under the provisions of the Act, unless as laid down in the Section 3(4) of the Act, his activities as bootlegger affects adversely or is likely to affect the maintenance of public order and public health. Thus, the detention deserves to be quashed and set aside.

6. The learned counsel has relied upon the judgment in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989 SC 491 and Division Bench judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J) in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana. He has also relied upon the judgment, reported in 2000 (1) GLH 393, particularly para 6, 7.

7. The learned APP has relied upon the order of the authority. The authority has not filed affidavit in this behalf.

8.I have considered the facts and circumstances of the case in view of the, submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of boot-legging carrying out by the petitioner not affects public order but only law and order.

9.In view of the same, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Bhudarbhai Ramjibhai Vaghsana, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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